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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,923	01/24/2002	Alan Joseph Soares	J6720(C)	3954

201 7590 07/11/2003

UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 07/11/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/056,923

Applicant(s)

SUARES ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3-7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Examiner acknowledges receipt of request for corrected filing receipt filed 02/19/2003, IDS filed 01/24/02 and supplemental IDS filed 07/22/02, 08/14/02, 11/04/02, 11/27/02 and 12/16/02.

Applicants are respectfully requested to amend page 1 of the specification to insert ---This application claims benefit of provisional application number 60/318,687 filed 09/12/2001---

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language:

2. Claims 1-3, and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Beerse et al. (US 6,294,186).

Beerse discloses a composition comprising safe and effective amount of benzoic acid analog, safe and effective amount of a metal salt and dermatologically acceptable carrier where said composition has a pH of from about 1 to about 7 (column 3, lines 33-62, column 6, lines 10-49, column 8, lines 16-63). The carrier may be aqueous solution or alcohol solution (column 9, lines 28-50). Beerse further discloses that thickeners may be added to the water or alcohol based solutions in amounts of from about 0.01% to about 5% (column 9, lines 55-68, column 10, lines 39-42). The composition of Beerse further contains conditioning agents such as glycolic acid and glycolate salts (alpha-hydroxy acids) in amounts of from about 0.01% to 20% (column 36, lines 14-26) and thickening agent in amounts of from about 0.1 to 5% (column 36, lines 55-59); and ARISTOFLEX AVC is an example of polymeric thickener used in Beerse (column 38, lines 24-28).

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The comprising language of the generic claim allows for the presence of benzoic acid analog and metal salts. Future intended use is not critical in a composition claim and cosmetic is an intended use of the composition. Thus, the teachings of Beerse meet the limitations of the claims.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (US 6,294,186).

Beerse teaches the instant composition except that Beerse does not teach the amount of the hydroxycarboxylic acid to the salt. It is known that salts are more soluble than acid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a composition that comprises carriers, alpha carboxylic acid and salt thereof and 2-acrylamido-2-methylpropanesulfonic acid (AMPS or taurate). One having ordinary skill in the art would have been motivated to ascertain ratios of acid to salt that would present workable combination in the composition with the expectation that the acid-salt combination would provide the desired solubility in the aqueous or alcohol solution carrier.

5. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

Griat discloses oil-in-water emulsion that has a pH of  $\leq 3.5$  and the emulsion comprises a copolymer derived from acrylamide and 2-acrylamido-2-methylpropanesulfonic acid (AMPS or

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taurate) and at least one compound possessing multiple olefinic unsaturation (cross-linking agent) where the copolymer is in an amount of 0.01 to 5% (abstract, column 2, lines 16-60, column 3, line 64 to column 4 line 2). The olefinic crosslinking agent is methylenebisacrylamide, allylsucrose or pentaerythritol (column 3, lines 32-37). The ratio of acrylamide to 2-acrylamido-2-methylpropanesulfonic acid (AMPS or taurate) in the copolymer of Griat is between 85:15 and 15:85 (column 3, lines 38-50). Griat further discloses that the emulsion may contain alpha-hydroxy acids such as glycolic acid, lactic acid and hydroxyoctanoic acid and carriers (column 7, lines 36-54 and examples 1-3).

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara  
Patent Examiner  
Tech. Center 1600  
July 8, 2003

